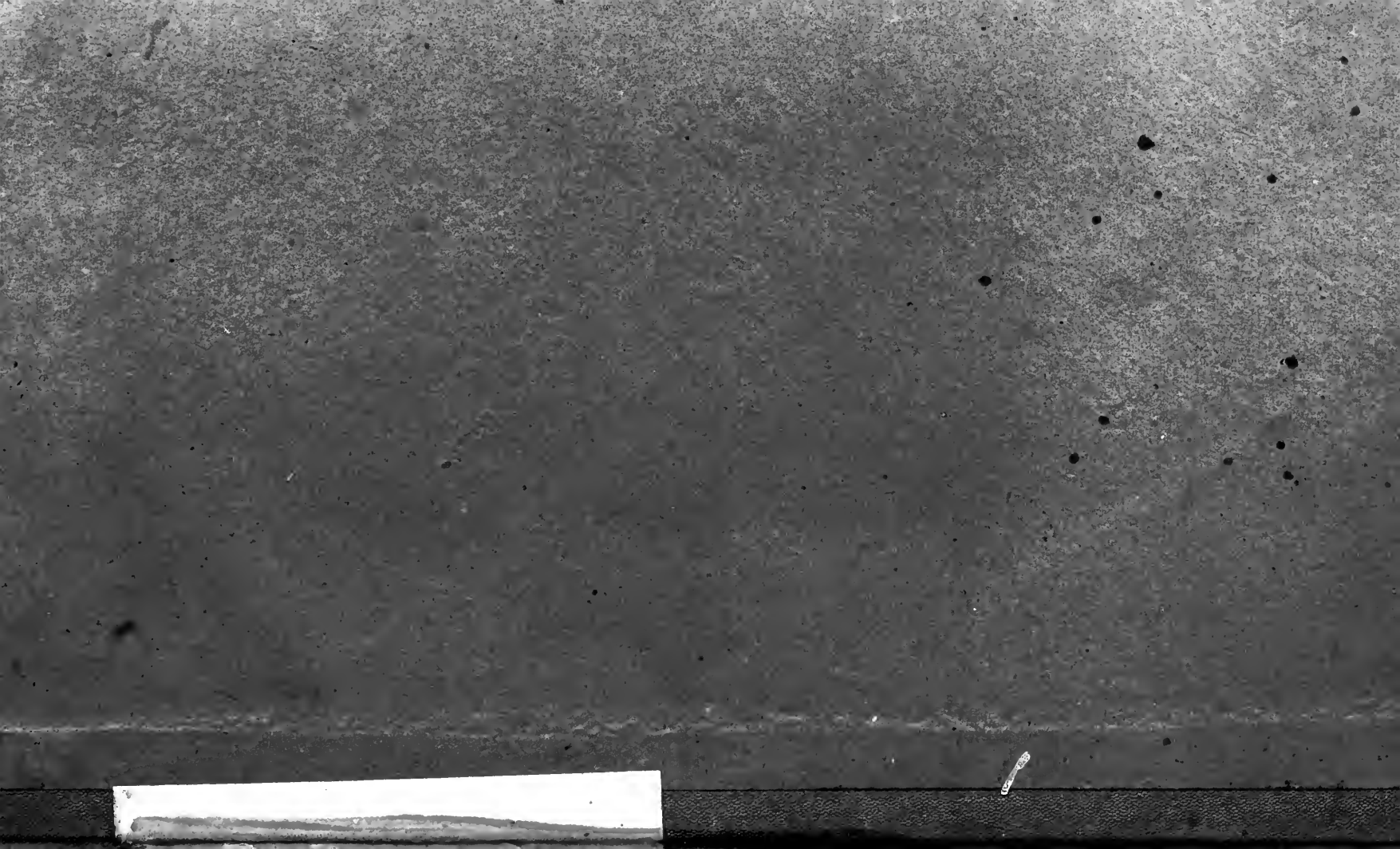

THE STATE.

HOW IT MAY BE FORMED FROM THE TERRITORY.

Authorities from the Decisions of the Supreme Court of the United States, the Acts of Congress, the President's Messages and the Precedents of Thirteen States.

By HUGH J. CAMPBELL,

U. S. Attorney, Dakota Territory.

THE STATE.

HOW IT MAY BE FORMED FROM THE TERRITORY.

The Territory "not a colony" subject to the unlimited power of Congress, but a Provisional and Temporary Government, to last only, in the words of the Supreme Court of the United States, "until it is settled and inhabited by a civilized community, capable of self government, and to be admitted as soon as its population and situation entitle it to admission."

Authorities from the decisions of the Supreme Court of the United States, the State Courts, the Acts of Congress, the President's Messages and the Precedents of thirteen States.

By HUGH J. CAMPBELL,
United States Attorney, Dakota Territory.

YANKTON, June 11th, 1883.

HON. H. J. CAMPBELL:

SIR:—The undersigned having read with much interest, a series of articles prepared by you and recently published in the Press and Dakotaian of this city, on the subject of the right of the people of a Territory to take the initiatory steps to form a State Constitution and inaugurate a government for themselves, believing that the people of Dakota are fully competent to manage their own affairs, and heve the requisite numbers and the intelligence and ability to govern themselves, and appreciating the importance to the people of this Territory of your labors in the preparation of these articles, showing the precedents for such course and quoting authorities and decisions of the courts, and high federal officers sustaining the people of the Territory in such action, respectfully ask you to furnish for publication in pamphlet form, the articles referred to, so that the people of the Territory may fully understand ther rights in the premises. Your early compliance will greatly oblige.

Very respectfully, your obedient servants,

J. R. GAMBLE,
C. J. B. HARRIS,
S. A. BOYLES,
J. R. SANBORN,
F. J. DEWITT.
A. J. FAULK,
NEWTON EDMUNDS,
E. C. DUDLEY,
FRANK ETTER,
GEO. W. KINGSBURY,
JOSEPH WARD,
W. S. BOWEN,
J. C. M. McVAY.

YANKTON, June 11th, 1883.

MESSRS. J. R. GAMBLE, C. J. B. HARRIS, AND OTHERS :

GENTLEMEN :—In reply to your very kind letter, I herewith furnish for publication, the articles referred to:

From want of time they are necessarily very incomplete. They, by no means, exhaust the authorities and precedents. But I believe that the whole current of authority and precedents uncited, as well as cited, support the conclusions arrived at.

Very truly yours,

HUGH J. CAMPBELL.

INTRODUCTORY.

Editorial from the Press and Dakotaian, May 29th.

"During the past week the Press and Dakotaian, has been giv-
"ing place to a series of articles relating to the rights of Territor-
"ies and their eligiblity to statehood, the last of which appears to-
"day. These articles contain all the known authorities upon the
"subject, compiled and commented upon at length by one of Da-
"kota's ablest lawyers—United States Attorney Campbell. He has
"given to it the close investigation of a hard working lawyer, has
"argued it purely from a legal and constitutional standpoint, and
"has furnished the people of Dakota with more information upon
"this important subject than could have come to them through a
"lifetime of actual experience. The newspapers of Dakota could
"confer no greater favor upon their readers than to reproduce the
"entire series of letters written by General Campbell."

"Many important conclusions are evolved from the mass of evi-
"dence furnished, chief among which is the undoubted right of
"the people of southern Dakota to proceed immediately to the
"formation of a State Government. It may be said that Con-
"gress will not recognize the movement—will not admit the State.
"The authorities quoted—running down from the United States
"supreme court, through the various legislative and executive de-
"partments of the nation—prove conclusively that Congress *has*
"formally and repeatedly recognized the right. The power to or-
"ganize for self-government is inherent with the people. There is
"but one restriction recognized by the courts, namely: That the
"section out of which it is proposed to construct a State shall pos-
"sess the requisite population. The interesting decisions relative
"to the States of Michigan and Tennessee sustain most completely
"this view of the case, and there are numerous other authorities
"tending in the same direction."

"The experience of the two States named, is particularly "valuable to us at this juncture, because they were formed by "the people themselves from portions only of the Territory to "which they belonged. In creating the State of Dakota it is "proposed to use but one-half of the Territory of Dakota, "and very many wise people have put forward the objection "that we have not the right to include such a division "in our efforts to enter the Union. But General Campbell's "researches demonstrated conclusively that Southern Dakota, "through its people, can erect and maintain a State Government."

"Under law, precedent and court decisions we are possessed of "greater rights than was supposed. We have the undoubted "authority to meet in Convention and adopt a Constitution. The "same being ratified by the people, we have the right to elect "State officers, to provide our own courts, to collect taxes and to "manage our own affairs. Should the provisional organization "provided by the General Government refuse to recognize the "Government provided by the people, such refusal would not in "any degree affect the legality of that Government. Should "congress delay the admission of our representatives, for the time "being, that act would not take from us the privilege of governing "ourselves here at home. We are possessed of the one requisite "—a sufficient number of people to entitle us to admission into "the union—and the General Government has no power under "the Constitution, to deny us the right of self-government, which "is guaranteed to us, under the constitution and the laws. We "are therefore in favor of immediate State organization. We are "in favor of it, because the time has arrived when we should "manage our own affairs, and not be longer subjected to the "governing power of men appointed from the States. We are in "favor of it because it is our constitutional right, privilege and "duty."

THE STATE.

"Fear God and take your own part."

That was the way that thirteen States, since the original thirteen established their independence, made their own States, without any enabling act of Congress, or of anybody. They acted upon the great legal and constitutional principle, now well settled as a part of the fundamental law of the land: "That all power is " inherent in the people and all governments are founded upon " their authority, and instituted for their safety, peace and happi- " ness. For the advancement of these ends, the people have at all " all times, an unalienable and indefeasible right, to alter, reform " or abolish their government, in such manner as they may think " proper.'"

The words just quoted are substantially a part of the constitutions of Massachusetts, Vermont, Connecticut, Maine, Alabama, Delaware, Mississippi, Tennessee, Alabama, Pennsylvania, Florida, New Jersey, Texas, Missouri, California, Kentucky, Ohio, Iowa, Oregon and Minnesota.

The thirteen States who formed their State Governments, by their own authority, without an enabling act, are VERMONT, KENTUCKY, TENNESSEE, MAINE, MICHIGAN, ARKANSAS, FLORIDA, IOWA, WISCONSIN, CALIFORNIA, KANSAS, OREGON AND NEVADA.

Wisconsin's second convention, and Nevada's first, were held without an enabling act. Kansas held two, the Topeka and Lecompton conventions, without an enabling act, and one, the Wyandotte convention, under an enabling act, but it was called by the people, and not by the territorial legislature.

Not only is the principle quoted above, incorporated in state constitutions, and "formally and solemnly asserted" in the Declaration of Independence, and acted upon everywhere, as part of the common law of America, but the specific right of the people of Dakota, to self government and to admission as a state, is expressly and formally, in words, made a part of the "supreme law" of

the land. By the Treaty of cession by France to the United States, of the province of Louisiana, of which Dakota was a part, of April " 30, 1803," it is provided, that, " the inhabitants of the ceded ter- " ritory shall be incorporated in the Union of the United States, " and admitted as soon as possible, according to the principles of " the federal constitution, to the enjoyment of all the rights, " advantages and immunities of citizens of the United States."

Now the meaning of this strong and wise provision of the Treaty has been construed by Congress, and determined by the courts, definitely, finally, and beyond all dispute, and has been acted upon so many times, that it is as much a part of the settled law of the land, as its sister principle, "that all men are created equal." This interpretation is this, that the compact contained in the Treaty, secured absolutely and inviolably, "the right to form a permanent " constitution and a State Government; that the right can in no " way be modified or abridged, or its exercise controlled or re- " strained by the General Government; that the assent of Congress " to the admission of the State is only necessary, because the older " States possesses the physical power to refuse a compliance with " the terms of the compact; and that the right to admission be- " comes absolute and unqualified, on the adoption of the Consti- " tution of the State, and the organization of the State Govern- " ment."

The words quoted, are from the decision of the Supreme Court of Michigan, construing a compact in the Ordinance of 1787, similar to the compact in the Treaty of 1803.

So then, the people of Dakota, in exercising the right which they are about to do, of forming a State Government, are asserting no new doctrine, but a doctrine settled judicially fifty years ago, established by treaty eighty years ago, acted on by the people of Vermont in 1775, one hundred and eight years ago.

In addition to all these authorities, the Supreme Court of the United States, has repeatedly announced the doctrine, that all territorial governments are mere temporary and provisional governments, intended by Congress to last only until such time as the people thereof had the numbers and ability to create their own State Government.

Not only this, but *Congress itself has decided that a State Government, framed by the people of a territory, while the territorial government was still in existence, without any enabling act of Congress, and before the State was admitted into the Union, was a legal and valid State Government.*

Michigan territory, which then extended over what is now Wisconsin, and part of Minnesota, in 1835, held a constitutional convention for that part of the territory known as the peninsula, and now, the State of Michigan. That convention framed a State Constitution, and submitted it to the people who adopted it, and

elected a complete State Government and a State Legislature without an enabling act. The State presented itself for admission by a memorial from the Senate and House of Representatives of the State of Michigan in December 1835. President Jackson presented the claim of the state to Congress, and he based the claim of the State to admission, upon the compact in the Ordinance of 1787, similar to our compact, though not so broad.

That compact reads as follows:

"And whenever any of the said States (meaning the new States "to be formed out of Territory Northwest of the Ohio,) shall have " 60,000 free inhabitants therein, such State shall be admitted by " its delegates, into the Congress of the United States, on an equal " footing with the original States, in all respects whatever, and " shall be at liberty to form a permanent Constitution and State " Government."

Congress recognized the claim, and passed an act admitting the State, but modifying its boundaries by excepting a strip of land claimed by Ohio, and required the State to assent to this change, though a convention elected for that sole purpose, postponing the admission until such assent was given. So that Michigan was still unadmitted, though organized as a State. Yet the State Legislature met and called a Convention by an act of the legislature passed July 25, 1836. This convention met in September, 1836, and refused to assent to the condition imposed by Congress. Then a new Convention elected by a voluntary movement of the people, without the authority of Congress, or the State Legislature, or the territorial legislature, but called by the people themselves, was elected, and met in December, 1836, which accepted the condition imposed by Congress and communicated their action to the President. The President stated to Congress, that if the communication had arrived during the recess of Congress, he would have issued his proclamation declaring the State admitted, and that in his opinion the State had complied with the terms of admission.

Thus Jackson recognized the validity of a State Convention that was called neither by Congress, nor the State Legislature nor the territorial legislature. Congress then, by an act reciting that the State of Michigan had assented to the required boundaries, admitted the State into the Union, January 26, 1837.

Thus Congress, as well as the executive power, admitted the legality and validity of this Convention, called neither by Congress nor a State Legislature, nor a territorial legislature, but called simply, by the "inherent" power, and the "unalienable and inde- " feasible right of the people to alter, reform, or abolish their gov- " ernment in such manner as they may think proper," as well as the legality and validity of the previous Convention and of the State Legislature.

But the legal right and authority, of the people of Michigan to call these conventions and to establish a State Government, besides being recogized by the President and confirmed, approved and ratified by Congress, was expressly and emphatically affirmed, and authoritatively established by the courts, thus putting it beyond question.

This was the case.

The State Legislature of Michigan, elected under the new Constitution, met and organized March 3, 1835, one year and three months before its conditional admission, June 15, 1836, and one year and ten months before its final admission, January 26, 1837. The territorial government still claimed to exist, yet this State Legislature proceeded to legislate, and assumed all the powers of a State Government. Among other laws, they passed a law incorporating the "Detroit Youg Men's Society," Morch 26, 1836. That society obtained title to certain real estate, and claimed possession. Its lawful existence was denied and its right to do any corporate act or to own property, was tried in the courts, in an action of ejectment brought by the society. The defendants claimed that there was no legal State Government, no lawful State Legislature, within the territory of Michigan, and no lawful incorporation. That the territorial government was still in existence; that the State Government was not recognized by Congress, and that a territorial and State Government cannot co-exist within the same territory.

We hear something like this now, from certain underlings.

Now hear what the Supreme Court of the State of Michigan say on this point, as reported in 1st Douglas, Michigan reports, page 119, in the case of "Scott vs. The Detroit Young Men's Society, lessee."

The court there held that the society was a valid corporation; that the State of Michigan was fully and completely and lawfully formed when the people adopted the State Constitution on October 5th, 1835; that the territory and territorial government then and there ceased to exist; and that the State Legislature was a lawful and competent State Legislature, whose laws must be respected and obeyed.

The court say: "We shall first inquire whether Michigan was "a State, with a Constitution, and a government organized under "it, possessing the sovereign power of State legislation over the "people within her limits, on the 26th day of March, 1836. If "not, then the 'act to incorporate the 'Detroit Young Men's So-"ciety,' passed by a body claiming to be the Legislature of such "State, and approved by Stevens T. Mason as Governor of such "State, on the day last mentioned, was a nullity. It gave no "vitality or powers to the defendants, as a corporation. They had "no power to take and hold the real estate in question, or to sue

" for its recovery; and the court below erred in permitting the act " to be read in evidence to the jury, and in charging the jury that " the defendants were well incorporated under it.

" The people of the former Territory of Michigan, remained " subject to the territorial government, established by Congress, " until after they had acquired and exercised the right to organize " a State Government. That right was secured to them, on the " happening of a certain future contingency, by the 'Ordinance of " Congress for the government of the territory of the United " States, Northwest of the river Ohio,' passed July 13, 1787.

" Article V, of the Ordinance, provides for the division of the " Territory Northwest of the river Ohio into States; and also that " 'whenever any of the said States shall have sixty thousand free " inhabitants therein, such State shall be admitted, by its dele- " gates, into the Congress of the United States, on an equal footing " with the original States, in all respects whatever; and shall be " at liberty to form a permanent Constitution and State Govern- " ment.' That the people of this division of the Northwest Terri- " tory, when it was found to contain sixty thousand free inhabi- " tants, had a right to form a permanent Constitution and State " Government is unquestionable. The right, and the power to " form such a constitution and government, was as absolutely and " irrevocably vested in, and secured to, the inhabitants of Michigan, " by the compact contained in the Ordinance of 1787, between the " original States, and the people who then did, and who should " thereafter inhabit the several divisions of the Territory, North- " west of the river Ohio, as was the right of free government vested " in and secured to the whole people of the American Union, by " the Constitution of the United States. That right could in " no way be modified or abridged, or its exercise controlled or re- " strained, by the General Government, or by any other power, " whatever, unless it was done by the consent of the people them- " selves."

" Although, in the wording of this article of the Ordinance, 'the " liberty to form a permanent Constitution and State Government,' " follows the grant of the right of such State to 'be admitted, by " its delegates, into the Congress of the United States,' yet, it is " evident that the formation of the State must, of necessity, pre- " cede such admission. The State must exist, before it can have " delegates."

" To gain admission in fact into Congress, the new State must " obtain the assent of that body, not because she does not possess " a positive and unqualified right, under the Ordinance, to such " admission, on an equal footing with the original States, with her " boundaries as defined and agreed to in that instrument, but for " the sole reason, that the older States represented in Congress, " who are the other party to the compact, have a physical power

" to refuse a compliance with the terms of an agreement, which " they have deliberately made, and there is no third party, to " which the State, the weaker party, can resort to coerce a fulfill- " ment of the agreement."

" No such assent, however, was necessary, to enable the people " to convene, at such a time and place, and in such manner, as " they might determine upon, and erect for themselves a frame of " government. The only condition necessarily precedent to the " formation of such government, was the existence of sixty thou- " sand free inhabitants within the prescribed limits of the State."

"That Michigan contained the requisite number of free inhab- "itants to entitle her to a Constitution and State Government; that "the people proceeded regularly in the formation of such Consti- "tution and Government; and that they were republican and in "conformity to the principles of the Ordinance of 1787, is not "questioned by the plaintiff's counsel. It is still contended, how- "ever, that Michigan was not a State until admitted into the "Union, and recognized as such by Congress; but that she, in fact, "remained subject to the territorial government prescribed by the "laws of Congress, until her admission into the Union, and that "all her pretended legislation, as a State, under the Constitution "she had adopted, was utterly null and void."

"There is nothing to be found in the original compact, the Or- "dinance of 1787, which, in our judgment, favors this construc- "tion."

"The people of the original States, at the termination of the "revolutionary contest, found themselves overwhelmed with a "debt, which they were unable to discharge. They were unwill- "ing, and perhaps unable, to be taxed for its payment. For the "purpose of providing the means to pay this debt, extensive "tracts of land were ceded to the confederation, by Virginia "and other States. These lands were an unreclaimed wilderness "peopled only by savages, and consequently unproductive and "valueless to the treasury. To induce their settlement and sale, "was, therefore, an object of the first importance to the States; and "to effect this object, the terms of the compact contained in the "Ordinance of 1787, were proposed. The confederation, in that "act in effect said, to those who should emigrate to either division "of the North-West Territory—'If you will buy, reclaim, and set- "tle our waste lands, and thus replenish our empty treasury, and, "at the same time protect our widely extended northwestern fron- "tier from the incursion of the Indians, we will provide for your "government until your number shall reach sixty thousand; and "then you shall be at liberty to form a State Government for "yourselves, and shall be admitted into our Union of States on an "equal footing with ourselves.'"

"To this compact the people who settled in the now State of

"Michigan, became a party, and entitled to insist on the fulfill-
"ment of its terms by the General Government."

"When, in 1834, therefore, it was ascertained that the event
"had transpired, on the happening of which, the right of the
"people of Michigan to form a Constitution and State Govern-
"ment, was to vest, they were at liberty at any time, to avail them-
"selves of that right. The General Government nowhere pro-
"vided in the compact, that the people should obtain their assent,
"before they proceeded to form such government. If the people
"had the power to form a permanent Constitution and State Gov-
"ernment, it follows that they possessed the power to put the va-
"rious departments of such Government into operation."

"If it be said that the Constitution and Government should
"have first been submitted to Congress that it might be adjudged
"by that body whether they were republican and in conformity to
"the principles contained in the Ordinance, it may be answered,
"that the Confederation reserved to Congress only the right to de-
"termine the character of the Constitution, when after its adop-
"tion by the people, application should be made for admission
"into the Union. If the State Constitution should be found to be
"repugnant, in any of its provisions, to the Ordinance of 1787, or
"to the Constitution of the United States, or to the laws of the
"United States made in pursuance thereof, it would, so far forth,
"be utterly null and void, and be so adjudged by the appropriate
"tribunals, the courts of justice."

"The Constitution and Government, formed by the people of
"Michigan, was, then, authorized by the Ordinance of 1787,
"and it was competent for the people to put such such Govern-
"ment in operation."

"A Legislature was duly organized in all its branches, and a
"Governor elected, agreeably to the provisions of the Constitution.
"The act to incorporate the Detroit Young Men's Society was
"passed by the Legislature and approved by the Governor, ac-
"cording to the forms prescribed by the Constitution. It was ad-
"missible in evidence on the trial, and it conferred upon the de-
"fendants, among other corporate franchises, the right to pur-
"chase, hold and convey the real estate in question, and to sue for
"its recovery."

So rang out like bugle notes, the clear, distinct, brave, fearless, emphatic, unanswerable and authoritative tones of the Michigan supreme court, reannouncing the broad doctrines of the Declaration of Independence, and of the Bills of Rights of twenty States, "that all power is inherent in the people!" So will ring out, as brave and fearless and clear and authoritative the decision of the supreme court of the State of Dakota in a like emergency.

By the decision of the Michigan court, the following positions are settled and established:

3d. That the power to frame a Constitution includes the power to frame a State Government and put it into operation.

4th. That this Constitution and Government were in lawful existence, and the laws of its Legislature had full force and effect, before the admission of the State into the Union.

1st. That no enabling act of Congress was necessary to authorize the people of Michigan to frame their Constitution and establish their State Government.

2nd. That that right was absolutely and unqualifiedly secured to them by the compact in the Ordinance of 1787.

Since that decision, Arkansas, Florida, Iowa, Wisconsin, California, Kansas, Oregon, and Nevada have acted on its thauority, and Congress has sustained and approved their action.

The State of Arkansas, in the preamble to its Constitution, declare that they have "the right of admission into the Union by virtue of the Treaty of cession by France to the United States of the province of Louisiana."

Florida claimed the right by virtue of a similar provision in the Treaty with Spain. With the motto of this article as our motto, with the precedent of thirteen States, and with the previous sanctions of the Presidents, Congress and of the courts, to this line of action, the people of Dakota have but to speak the word, and the State of Dakota is.

THE ABSOLUTE AND CONSTITUTIONAL RIGHT OF THE TERRITORY TO BECOME A STATE, AS AFFIRMED BY THE SUPREME COURT OF THE UNITED STATES.

But the Supreme Court of the United States have decided very emphatically and repeatedly the character and limitations of the territorial government.

We quote from the leading case, that of Dred Scott vs. Sandford—a case which is historical, and was decided in times of great political excitement, but in which the luminous and powerful reasoning of Chief Justice Taney, has received the final verdict of the general approval of the bar of the United States.

Dred Scott vs. Sandford—Opinion of the Court, by Chief Justice Taney December Term, 1856, 19 Howard, 446.

"There is certainly no power given by the Constitution to the "Federal Government, to establish and maintain colonies border- "ing on the United States, or at a distance, to be ruled and gov- "erned at its own pleasure; nor to enlarge its territorial limits in "any way, except by the admission of new States. That power "is plainly given, and if a new State is admitted, it needs no fur- "ther legislation by Congress, because the Constitution itself de- "fines the relative rights and powers, and duties of the State, and "the citizens of the State, and the Federal Government. But no "power is given to acquire a Territory to be acquired and held "permanently in that character."

"And indeed the power exercised by Congress to acquire terri- "tory and establish a Government there, according to its own un- "limited discretion, was viewed with great jealousy by the lead- "ing statesmen of the day. And in the Federalist, (No. 38), writ- "ten by Mr. Madison, he speaks of the acquisition of the North- "western Territory by the Confederated States, by the cession from "Virginia, and the establishment of a Government there, as an "exercise of power not warranted by the Articles of Confederation, "and dangerous to the liberties of the people. And he urges the "adoption of the Constitution as a security and safeguard against "such an exercise of power."

"We do not mean, however, to question the power of Congress "in this respect. The power to expand the United States by the "admission of new States is plainly given; and in the construc- "tion of this power by all the departments of the Government, it "has been held to authorize the acquisition of territory, not fit for "admission at the time, but to be admitted as soon as its popula-

"tion and situation entitle it to admission. It is acquired to be-
"come a State, and not to be held as a colony and governed by
"Congress with absolute authority; and as the propriety of ad-
"mitting a new State is committed to the sound discretion of Con-
"gress, the power to acquire territory for that purpose, to be held
"by the United States until it is in a suitable condition to become
"a State upon an equal footing with the other States, must rest
"upon the same discretion. It is a question for the political de-
"partment of the Government and not for the judicial; and what-
"ever a political department of the Government shall recognize
"as within the limits of the United States, the judicial department
"is also bound to recognize, and to administer in it the laws of
"United States, so far as they apply, and to maintain in the Ter-
"ritory, the authority and rights of the Government, and also the
"personal fights and rights of property of individual citizens, as
"secured by the Constitution. All we mean to say on this point
"is, that, as there is no express regulation in the Constitution,
"defining the power which the General Government may exercise
"over the person or property of a citizen in a Territory thus ac-
"quired, the court must necessarily look to the provisions and
"principles of the Constitution, and its distribution of powers, for
"the rules and principles by which its decision must be governed."

"Taking this rule to guide us, it may be safely assumed that
"the citizens of the United States who migrate to a Territory
"belonging to the people of the United States, cannot be ruled as
"mere colonists, dependent upon the will of the General Govern-
"ment, and to be governed by any laws it may think proper to
"impose. The principle upon which our governments rest, and
"upon which alone they continue to exist, is the Union of the
"States, sovereign and independent within their own limits in
"their internal and domestic concerns, and bound together as
"one people by a General Government, possessing certain enumer-
"ated and restricted powers, delegated to it by the people of the
"several States, and exercising supreme authority within the
"scope of the powers granted to it, throughout the dominion of
"the United States. A power therefore in the General Govern-
"ment to obtain and hold colonies and dependent territories, over
"which they might legislate without restriction, would be incon-
"sistent with its own existence in its present form. Whatever it
"acquires, it acquires for the benefit of the people of the several
"States who created it. It is their trustee acting for them, and
"charged with the duty of promoting the interests of the whole
"people of the Union in the exercise of the powers specially
"granted."

"At the time when the Territory in question was obtained by
"cession from France, it contained no population fit to be associ-
"ated together and admitted as a State, and it therefore was abso-

"lutely necessary to hold possession out of it, as a Territory be-
"longing to the United States, until it was settled and inhabited
"by a civilized community capable of self-government, and in a
"condition to be admitted on equal terms with the other States
"as a member of the Union."

* * * * The Territory being a part of the United States,
"the Government and the citizen, both enter it under the author-
"ity of the Constitution, with their respective rights defined and
"marked out; and the Federal Government can exercise no pow-
"er over his person or property, beyond what that instrument con-
"fers, nor lawfully deny any right which it has reserved."

Thus the Supreme Court of the United States has decided the "following points:

1st. That the Federal Government has no power to maintain colonies, to be ruled and governed at its own pleasure.

2nd. It has no power to hold and govern a Territory permanently.

3rd. A Territory must be admitted as soon as its population and situation entitle it to admission.

4th. A Territory is acquired to become a State, and Congress has no power to hold it as a colony, and govern it absolutely.

5th. That Congress has power to hold possession of the Territory, and govern it, only, until it is settled and inhabited by a civilized community, and is capable of self government, then it is to be admitted on equal terms with the other States as a member of the Union.

THE PRECEDENTS OF VERMONT, TENNESSEE, ARKANSAS, MICHIGAN, IOWA, FLORIDA, AND CALIFORNIA, AND THE OPINIONS OF JACKSON, JOHN QUINCY ADAMS, WEBSTER, TAYLOR, AND BUCHANAN, ON THE RIGHTS OF THE TERRITORY TO FORM A STATE WITHOUT THE PERMISSION OF CONGRESS.

As the earliest precedent, I quote an account of the method pursued by Vermont, which was then part of the State of New York:

"The first step in this course was to call a convention to pass "upon the question of independence, in imitation of the Conti- "nental Congress acting for the Colonies. Circular letters were "addressed by some of the most influential persons to the different "towns, in pursuance of which delegates were appointed to a Con- "vention, which met at Dorset, on the 24th of July, 1776. By "different adjournments, a decision of the question was post- "poned until January, 1777, when the convention again assem- "bled at Westminster, and declared the New Hampshire Grants, "for thus was New Hampshire then styled, a free and independ- "ent State. The convention then adjourned, to meet again at "Windsor, in the following June. The little State thus boldly "claiming for herself a position among the nations of the earth, "at once became an object of general attention. That New York "would not readily acquiesce in her pretentions was certain, and it "was very doubtful whether the Congress would recognize her in- "dependent character, much less admit her into the Union."

Jameson's Con. Con., page 138.

I also quote from the same authority the account of the mode in which Tennessee formed her State Government and was admitted:

"The people of Tennessee in 1785 then being part of North "Carolina, of their own motion, called a Convention of delegates "to form a State Constitution. They did so, and adopted the "name of the State of Franklin. North Carolina resisted this at- "tempt, and ceded the district of Tennessee to the United States "in 1790. Congress, in May, 1790, provided a Territorial Gov- "ernment for Tennessee. The act of North Carolina contained "this proviso:"

"'Provided, That the Territory so ceded, shall be laid out and "formed into a State or states, containing a suitable extent of ter- "ritory, the inhabitants of which shall enjoy all the privileges "benefits and advantages set forth in the Ordinance of the "late Congress, (1787) for the Government of the Western Terri-

"tory of the United States.'"

"In July, 1795, the Territorial Legislature of Tennessee or-"dered a census of the whole Territory to be taken, for the pur-"pose of ascertaining whether there was the required number of "inhabitants to entitle her to admission into the Union, according "to the Ordinance of 1787 and the deed of cession. The act for "this purpose provided, that 'if it should appear that there were "sixty thousand inhabitants, counting the whole of the free per-"sons, including those bound to service for a term of years, and "excluding Indians not taxed, and adding three-fifths of all "other persons, the Governor be authorized and requested to rec-"ommend the people of the respective counties, to elect five per-"sons for each county, to represent them in convention, to meet at "Knoxville, at such time as he shall judge proper, for the pur-"pose of forming a Constitution or permanent form of Govern-"ment."

"The census was taken in the autumn of 1795, and the result "was, that there were declared to be 77,262 inhabitants, of whom "10,613 were slaves. In November, 1795, the Governor an-"nounced this result, and, in pursuance of the act for that pur-"pose, called on the people to elect delegates to a Convention to "frame a Constitution, to meet at Knoxville on the 11th of Jan-"uary, 1796. Accordingly, a Convention was elected, and met "there on that day, consisting of fifty-five members, five from each "of the eleven counties, and, on the 6th of February following, "adopted the first Constitution of Tennessee. A copy of this Con-"stitution was on the 19th of the same month, forwarded by the "Governor of the Territory to the President of the United States, "with a notification that on the 28th of March, at which time the "General Assembly of the State of Tennessee would meet to act "on the Constitution, the temporary Government established by "Congress would cease. This copy and notifications, with accom-"panying documents, were received by President Washington on "the 28th of February, and by him, were, on the 8th of April, "communicated to Congress. The claim of Tennessee to admis-"sion, based upon the provisions of the Ordinance of 1787, did "not receive from that body a ready or unquestioned assent. Af-"ter an energetic discussion, however, an act for the admission of "the State was, on the 6th of May, 1796, passed by a vote of 43 "to 30, and was approved by the President on the first of June "following, to take effect immediately.

"The grounds of the opposition, which, in the senate espec-"ially, was strenuous, was briefly as follows: That the compact "under which admission was claimed, was capable of two con-"structions; one, that as soon as 60,000 free inhabitants should be "collected in the Territory, they should be entitled to a place in "the Union as an independent State; the other that Congress

"must first lay off the Territory into one or more States, accord-
"ing to a just discretion, defining the same by bounds and limits;
"and that the admission of the State thus defined, should take
"place as their population respectively, amounted to the number
"of free inhabitants mentioned; that is, that the sixty thousand
"could not claim admission into the Union, unless they were com-
"prised within a State whose Territorial limits had been previ-
"ously ascertained by an act of Congress; that the latter con-
"struction was the preferable one, because it was conformable not
"only to the spirit, but to the letter of the Ordinance and deed of
"cession, which contemplated the erection of Tennessee 'into one
"or more States,' as Congress might determine; that the Terri-
"tory of Tennessee had no other or greater rights than had the
"Territories northwest of the Ohio, for whom the Ordinance had
"been expressly enacted; and it could not be pretended that the
"latter would be entitled to admission into the Union as one
"State, so soon as their population should amount to sixty thou-
"sand, because the Ordinance itself divided the country into three
"separate and distinct States, each of which must contain sixty
"thousand free inhabitants before it could claim to be received;
"that the action of Congress upon the question now, would *be re-*
"*garded and followed hereafter as a precedent*, and hence it was of the
"utmost importance that no sanction should be given to any prop-
"osition which expressly or even impliedly admitted, that the
"people inhabiting either of the Territories of the United States
"could, at their own mere will and pleasure, and without the de-
"clared consent of Congress, erect themselves into a separate and
"independent State; that the provisions of the Ordinance relat-
"ing to the admission of new States, when there should be sixty
"thousand free inhabitants within their respective limits, evi-
"dently contemplated the taking of a census, and as Congress
"was to act upon the result of such census, it was more proper
"that it should be taken in pursuance of its own order, than by
"that of a community whose interest might lead it to exaggerate
"its numbers, and whose report, therefore, if accurate would be
"received with distrust; and, finally, that there was reason to
"doubt the accuracy of the count taken by the Territorial Gov-
"ernment, since its order required the sheriffs of the several coun-
"ties to include in their enumeration all persons within their re-
"spective limits within the period allowed for making it, which
"was two months; hence, that the same men might have
"been counted in several counties, nay, in every
"county in the Territory, and that without any intentional fraud.

"On the other hand, the friends of the bill contended, that the
"people of Tennessee became *ipso facto*, a State, the moment they
"numbered sixty thousand free inhabitants, and that it became
"the duty of Congress, as part of the original compact, made at

" the time the Territory was ceded to the United States, to recog-
" nize them as such, and to admit them into the Union, whenever
" satisfactory proof was furnished to them of that fact; that to the
" objections, that previously to the proof of that fact being given,
" it was necessary that Congress should have laid out and formed
" that territory into 'one or more States,' and that the proof of
" their number should have been given under direction and by
" order of Congress, the people being incompetent to give that
" proof themselves, it was a sufficient answer that both those ob-
" jections supposed a construction of the Ordinance of 1787 and
" of the deed of cession, which was inadmissable, since it rendered
" that compact binding upon one party and not upon another;
" that it was absurd to suppose that that Ordinance, whose object
" it was to establish the principles of a free Government, and to
" determine with certainty the conditions of the admission of new
" States into the Union, had made the time when those people
" were to enjoy the Government and be admitted as a member of
" the Union depend, not on the contingency of their having sixty
" thousand free inhabitants, but on certain acts of Congress;
" in other words, on the sole will of Congress; that either it must
" be conceded, that their admission depended solely on the condi-
" tion of the compact being fulfilled, to-wit, their having the pop-
" ulation required, or it must be declared that it rested on another
" act, which might be done or refused by the other party; that as
" to the return of the number of inhabitants, no mode had been
" fixed by the compact how that number should be determined,
" but, as by the acts of Congress, establishing temporary Govern-
" ments in the Territory affected by the Ordinance of 1787, when-
" ever they should have respectively five thousand inhabitants,
" the Governors of the Territories were especially authorized to
" cause the enumeration to be made, there could be no doubt the
" same course was to be pursued with respect to their qualifica-
" tions for becoming members of the Union; that, at most, it was
" merely a question of evidence; and, if no mode had been pre-
" sented for taking the enumeration, it only made it more difficult
" for Congress or the Territory to be satisfied of the fact of their
" having the requisite number, but that it could not affect the
" right; that, instead of caviling at the mode of proof, Congress
" ought to address itself to the task of weighing the evidence,
" which the parties interested had collected and brought forward;
" that it would be well to consider the consequences of refusing at
" that time and under those circumstances, to receive
" Tennessee into the Union; that, if it was desired to establish a
" Temporary Government there, it was doubtful whether that
" could be accomplished, for the people believed that in changing
" their Government they *only exercised a right which had been secured*
" *to them by a sacred compact,* and under that belief they would be

" disposed to defend it."

Jameson's Constitutional Convention, page 161.

The latter argument seemed to have most weight with Congress, for it admitted the State of Tennessee on May 6, 1796.

I quote further from this author, the following strong statement, coming from an unwilling source:

" Undoubtedly, if Congress were, without a cause, to refuse, " upon any conditions, to admit a Territory entitled to admission, " such refusal would be an abuse of power, and if persevered in to " a sufficient length, might justify or necessitate a revolution."— " *Jameson's Constitutional Convention, page 166.*

The historian, Von Holst, on the subject of the power of Congress over the Territory, says:"

" The United States have outside of the constitution no legal ex- " istence. The relation of the Union to the Territories is there- " fore a legal relation, in and under the Constitution, which is " wholly independent of the legislation of Congress, of which it is " in fact the basis."

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" Thus, though the Territories are possessions of the United " States, we shall be obliged to concur unconditionally with the " Supreme Court, which in contradiction to Webster, in a later " decision, repeatedly designates them also as a "part" of the Unit- " ed States."

" And equally incontestable is its further declaration, that the " powers of the Federal Government with regard to the persons " and property of the citizens of the Territories, cannot be other or " greater than those granted it over the citizens of the State."— " *Con. His. of the U. S., vol. 3, page 445, Von Holst.*

In the case of California, President Taylor took the same view of the powers of the people as the Supreme Court of Michigan, and acted with the same high regard and profound respect for the constitutional rights of the people of the Territories.

" Thomas Butler King, of Georgia, was sent thither (to Califor- " nia) to induce the population to give themselves a State Consti- " tution and then to petition for admission into the Union. His " instructions of the 3d of April, 1849, inculcated with special " emphasis, that the organization of the State must, in every re- " spect be throughout the people's own work, and that the Presi- " dent could do no more than 'protect and defend' them in it."

" In taking this step, Taylor met the wishes of the population of " California independently of the slavery question, for the discus- " sion of which no urgent reason as yet existed. There had been " for some time an agitation on foot in different parts of the Terri- " tory for the establishment of a firm, legal order of their own " initation. The rule of the commanding officer of the federal " troops, who bore the title of governor, had neither sufficient

"strength nor that living connection with the people, which has "now become absolutely indispensable in the United States; the "collection of the taxes and the expenditure of the receipts, had "led to variances and bitter wrangling with this irresponsible rule "of uncertain amphibious character; and the coarse, criminal ad- "venturer element was daily becoming a more fearful scourge. "If thorough going relief was not speedily administered, affairs "would now soon assume a shape that would make the name of "California, like that of Sodom and Gomorrah—a by-word for all "time. In these circumstances, it was really monstrous, to de- "mand that the Californians should wait year after year with "stolid patience, till the quarrel on the slavery question was some- "how and sometime ended, in order then to receive from the "hands of Congress a real government and legal status. Congress "was not only guilty of a serious neglect of duty, but, in its pro- "longed and fruitless efforts to give a legal existence to the do- "main acquired from Mexico, it offered the most pitiable illustra- "tion of political impotence that can be found in the history of "the United States. And the population of California swept to- "gether from all the States of the Union gave the most magnifi- "cent illustration of the wonderful capacity of this people for self "government, by creating for themselves on their own motion, "and with the utmost coolness and deliberation, a political organ- "ization, which, proved itself viable under conditions, to which "many old and firmly established governments must have suc- "cumbed."

"A few days after the news reached San Francisco that all the "debates in Congress for the organizatton of the territory, had "again failed to lead to any results, the "legislative assembly," of "the district—a body of representatives without any legal author- "ity, chosen some months before by the people—issued an ad- "dress to the people, in which it called upon all the districts to "choose delegates to a Convention which was to assemble on the "third Monday of August, for the purpose of drawing up a plan "for a State Constitution. At the same time, but without knowing "of this step, General Riley, residing at Monterey, issued, June "third, in his capacity of Governor, a proclamation, calling a "Convention to be held at Monterey, Sept. 1, for the same pur- "pose. San Francisco denied the Governor all authority in this "matter, but finally allowed itself to be induced by his friends, "with express reservation of the legal question, to invite the other "districts, in the interests of the common weal, to obey Riley's "summons."

"On the appointed day the Delegates began to assemble at "Monterey, and on the 13th of October, the Convention terminat- "ed its labors."

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"On the 13th of November 1849 the population accepted the Constitutiton by a vote of 12,066 against only 811, and on the 15th of December the Legislature met at San Jose. Five days later Riley formally placed the Government in the hands of the new civil authorities."

California was admitted under this Constitution, by an act of Congress which passed September 12, 1850—*Von Holst's Con. St. Hist. vol. 3 page 461.*

IN THE CASE OF MICHIGAN,

"James Buchanan said in the Senate: 'I think their course is "clearly justifiable, but if there is anything wrong or unusual in "it, it is to be attributed to the neglect of Congress."

"For three years they have been rapping at your door, and "asking for the consent of Congress to form a Constitution, and "for admission into the Union; but their petitions have not been "heeded, and have been treated with neglect. Not being able to "be admitted in the way they have sought, they have been "forced to take their own course and stand upon their RIGHTS— "rights secured to them by the Constitution and a solemn irre- "pealable Ordinance (of 1787.)"

"They have taken a census of the Territory; they have formed "a Constitution, elected their officers, and the whole machinery "of a State Government is ready to be put in operation; they are "only awaiting your action. Having assumed this attitude they "*now demand admission as a matter of right*; they demand it as an act "of justice at your hands."

"Are they now to be repelled, or to be told that they must re- "trace their steps and come into the Union in the way they first "sought to do, but could not obtain the sanction of Congress?"

"In fear of the consequences of such a decision, I tremble at "an act of such injustice."—*Benton's thirty years view, vol. 1, page "629.*

"John Quincy Adams expressed the same view as to the guar- "antees of the Louisiana Treaty, entitling Arkansas to admission "in spite even of her slavery.

"John Quincy Adams was then the most decided opponent "of slavery in the house, and he expressly declared that, in his "opinion, not only the compromise of 1820, but also the Louisi- "ana Treaty, forbade all opposition to the admission of Arkansas "as a slave State."—*Von Holst's Const. Hist., vol. 2, page 145. Debates "of Cong., vol. 13, page 33.*

Mr. Adams' words were: "She (Arkansas) is entitled to ad- "mission as a State, as Louisiana and Mississippi and Alabama, "and Missouri, have been admitted, by virtue of that article in "the Treaty for the acquisition of Louisiana, which secures to the "inhabitants of the ceded Territories all the rights, privileges "and immunities of the original citizens of the United States, and

" stipulates for their admission conformably to that principle, into " the Union.

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" It is written in the bond, and however I may lament that it " was ever so written, I must faithfully perform its obligation."—*Benton's Thirty Years View, vol. 1, page 636.*

Arkansas and Michigan were admitted by a vote of twenty-four to eighteen, in the Senate, and of one hundred and fifty-three to forty-five, in the House, June 15, 1836. (Michigan's admission was conditional, and she was finally admitted Jan. 26, 1837.)

In the case of Iowa and Florida, on Dec. 28, 1846, there seems to have been no struggle, not even an objection, though both had framed their State Governments, after the example of Michigan and Arkansas, without any previous permission of Congress, and they were both admitted by a single act.

President Taylor, in the case of New Mexico, pronounced himself energetically in favor of the rights and power of the people of the Territories to form Governments for themselves, and apply for admission into the Union. I quote from Webster's letter to Governor Bell, of Texas:

" The President directs me to state, that Colonel Monroe's proc- " lamation appears to have been issued in pursuance or in conse- " quence of an order or letter of instructions given by the late " Secretary of War, under the authority of the late President, to " Lieutenant Colonel McCall. Of this order, which bears date on " the 19th of November, 1849, your Excellency was undoubtedly " informed at the date of your letter. A full and accurate copy, " however, is attached to this communication. Colonel McCall is " therein instructed, that if the people of New Mexico, for whom " Congress had provided no Government, should manifest a wish " to establish a Government for themselves and apply for admis- " sion into the Union, it will be his duty and the duty of others " with whom he is associated, *not to thwart, but to advance* their " wishes. This order does not appear to authorize any exercise of " military authority, or of any official or even personal interfer- " ence to control or affect in any way the primary action of the " people in the formation of a Government, nor to permit any " such interference by subordinate officers. Colonel McCall and " his associates were not called upon to take a lead in any meas- " ures, or even to recommend anything as fit to be adopted by " the people. Their whole duty was confined to what they might " be able to perform subordinate to the wishes of the people. In " this matter it was evidently contemplated that they were to act " as agents of the inhabitants, and not as officers of this Govern- " ment.'

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" The late President had adopted the opinion, that it was justi-

" fiable in the people of the Territory, under the circumstances, " to form a Constitution of Government, without any previous au- " thority conferred by Congress, and thereupon to apply for admis- " sion into the Union."—*Webster's Works, vol. 6, page 484.*

ANDREW JACKSON'S OPINION.

In the case of Michigan, Andrew Jackson then President, affirmed decidedly and emphatically, the right of the people of that Territory to frame their State Constitution and State Government, without any previous consent of Congress.

In his message on the Michigan application, he says:

"By the act of the 11th of January, 1805, all that part of the " Indiana territory lying north of a line drawn due east from the " southerly bend or extreme of Lake Michigan until it shall in- " tersect Lake Erie, and east of a line drawn from the said souther- " ly bend, through the middle of said lake, to its northern extrem- " ity, and thence due north, to the northern boundary of the " United States, was erected into a separate Territory, by the name " of Michigan. The Territory comprised within these limits, be- " ing part of the district of country described in the Ordinance of " the 13th of July, 1787, which provides that whenever any of the " States into which the same should be divided should have sixty " thousand free inhabitants, such States should be admitted by " its delegates, into the Congress of the United States, on an equal " footing with the original States in all respects whatever, and " shall be at liberty to form a permanent Constitution and State " government, provided the Constitution and Government so to " be formed shall be republican; in conformity to the principles " contained in these articles, the inhabitants thereof have, during " the present year, *in pursuance of the right secured by the Ordinance,* " *formed a Constitution and State Government.*"—*Benton's Thirty Years View, vol 1 p. 627.*

EXAMPLE OF IOWA.

The following is a slight sketch of the history of Iowa's formation of her State Government, published in the Sioux City Journal. The history is given briefly in Andreas' Atlas. The author says:

"From 1838 to 1846, Iowa remained a separate Territory, dur- " ing which time the office of Governor was held by Robert Lucas, " John Chambers and James Clarke."

"Congress made provision by an act approved March 3, 1845, " for its admission into the union as a State, with boundaries at " variance with those finally established. By this act the State " was to extend north to the parallel of latitude passed through the " Mankato or Blue Earth river, in the present State of Minnesota. " This boundary would have made the State very long and nar-

" row, extending it away up north, and depriving it of the Miss-
" ouri slope and the boundary of that river on the west, so that,
" instead of being the well-shaped State that it now is, with
" the two grand rivers of the continent flowing on either side
" of it, it would have been ill-shaped, and had another territory
" lying between it and the Missouri. The boundaries, however,
" were not to be settled in that way."

" In October, 1844, a Constitutional Convention had been held
" in Iowa City, and a Constitution framed, which embraced boun-
" daries taking in much of the southern portion of Minnesota.
" The people of the Territory disapproved of the reduction of
" these boundaries by Congress, and at an election held August
" 4, 1845, rejected the Constitution. The vote stood 7,235 for, and
" 7,656 against it. In 1846, Congress proposed the present boun-
" dary lines, and another Constitutional Convention met at Iowa
" City on the 4th day of May of that year. A session of fifteen
" days resulted in the framing of a Constitution which was sanc-
" tioned by the people at an election held August 3, 1846. The
" popular vote this time was 9,492 for, and 9,036 against the Con-
" stitution. This Constitution was agreed to by Congress, and on
" the 28th of December of the same year, Iowa was admitted into
" the Union as a sovereign State."

" On the *26th of October preceding, the first election had been held for*
" *State officers,* when Ansel Briggs was elected Governor;
" Elisha Cutler, jr., Secretary of State; Joseph T. Fales, Auditor,
" and Morgan Reno, Treasurer "

THE ORDINANCE OF 1787 EXTENDED OVER DAKOTA BY FOUR SUCCESSIVE ACTS OF CONGRESS, AND ITS GUARANTEES AFFIRMED BY OUR OWN ORGANIC ACT.

The compact contained in the Ordinance of 1787, applies to Dakota, as well as that of the Louisiana Treaty. John Quincy Adams, as we have seen, regarded the Treaty as equally operative and imperative as the Ordinance. But Dakota holds the guarantees of both, as will be seen by the following running synopsis of history.

The Indiana Territory was organized Feb. 27, 1809. It was cut off from the Northwest Territory, and included all the territory of the United States west of the Ohio to the Mississippi. By the act of Congress organizing it, it was declared:

"That all the inhabitants thereof shall be entitled to and enjoy all and singular the rights, privileges and advantages granted and secured to the people of the Territory of the United States Northwest of the River Ohio, by the said Ordinance (1787.)"

On Jan. 11, 1805, Indiana Territory was divided, and Michigan Territory formed out of all that country west and north of the latitude of the south end of Lake Michigan, and east of a line through the middle of that lake, with the same provision as to the Ordinance of 1787.

In February 3, 1808, Congress divided Illinois Territory from Indiana, by putting in Illinois Territory, all that country which lay west of the Wabash river, and of a line due north from that river.

To all the inhabitants thereof, the law repeated the compact of the Ordinance of 1787.

On April 18, 1818, all of the Territory of Indiana, north and west of that State, and all that part of the Territory of Illinois, north and west of that State, which included Wisconsin and Minnesota as far as the Mississippi river, were added to Michigan Territory, and to their inhabitants were secured the same privileges and immunities as belonged to the other citizens of Michigan Territory.

On June 28, 1834, Congress again added to the Territory of Michigan, all that part of the territory of the United States west of the Mississippi river, and north of the State of Missouri, and east of the Missouri and the White Earth rivers, to the Canada line.

That included all of Iowa and Minnesota west of the Missis-

sippi, and of DAKOTA east of the Missouri and the White Earth rivers.

And Congress extended to the inhabitants therein, all the privileges and immunities of the other citizens of Michigan Territory. This included the compact of the Ordinance of 1787.—*Statutes at Large, vol. 4, page 701.*

By three other successive acts, that of April 20, 1836, creating Wisconsin Territory, that of May 31, 1838, creating Iowa Territory, and that of March 3, 1849, creating Minnesota Territory, making four acts in all, Congress in each, secured to the people of DAKOTA all the rights, privileges and immunities guaranteed by the Ordinance of 1787.

That Ordinance was expressly and unmistakably extended over Dakota, by an act of Congress passed June 28, 1834, as will be seen by reference to the Statutes at Large, Volume 4, page 701. It was again extended by a Congressional Act, passed April 20, 1836, which says:

"The inhabitants of the said Territory, (Wisconsin, Minnesota and Dakota, all included in the Territory of Wisconsin) shall be entitled to and enjoy, all and singular, the rights, privileges and advantages granted and secured to the people of the Territory of the United States Northwest of the river Ohio by the articles of the Compact contained in the Ordinance for the government of said Territory, passed on the 13th day of July, 1787."

And it says further that "the said inhabitants shall also be entitled to all the rights, privileges and immunities heretofore granted and secured to the Territory of Michigan and to its inhabitants."

Revised Statutes, Sec. 1891, section 16 of the original law, which is the Organic Act of Dakota, recognizes this guarantee, and extends it over the whole of Dakota.

So that the people of Dakota stand doubly guaranteed. First by the Treaty of 1803, which Adams pronounced inviolable, and mandatory on Congress, and next by the Ordinance of 1787, which the courts and Congress have decided, gives the people under it absolute and unqualified "right to statehood and admission."

CONCLUSIONS.

The foregoing is but a hasty and very meagre summary, of the precedents and authorities in American history for the creation of State Governments by the people of a Territory, without any previous enabling act, or other authority, save that of the reserved, sovereign and inherent powers of the people.

Neither my time, nor the space of the paper, would suffice to enumerate them. What I have written has been at the request of friends and citizens of Dakota, and of the editors of the PRESS AND DAKOTAIAN. I have been obliged to pass over in silence, the

large majority of the precedents in favor of such action. The conclusions to which the authorities and precedents cited, and the numerous ones uncited, and the special facts of Dakota's case, lead, are I think as follows:

1. That experience has abundantly demonstrated, that the welfare of the people is promoted and secured, only, by a permanent government, sovereign in character, republican in form, and responsible to the people, and that all good and just government, should be, a government "of the people, by the people and for the people."

2. That the compact contained in the Ordinance of 1787, which has been extended over the people of Dakota by five successive acts of Congress, guarantees "absolutely and inviolably" to them the right to form a permanent Constitution and State Government whenever said Territory shall contain sixty thousand free inhabitants.

3. That the Treaty by which the Louisiana purchase was acquired, which is "the supreme law of the land," guarantees to the people of Dakota as absolutely and inviolably as the Ordinance of 1787, that "they shall be incorporated in the Union of the "States, and admitted as soon as possible, according to the princi- "ples of the Federal Constitution, to the enjoyment of all the "rights, advantages and immunities of citizens of the United "States."

4. That under the Constitution of the United States, as authoritatively determined by the Supreme Court of the United States, the Territory of Dakota was acquired, only, for the purpose and upon the condition, that it shall be admitted into the Union as a State, as soon as its population and situation should entitle it to admission; and that according to the same authority, Congress "has no power to hold and govern this Territory permanently in the character of a Territory."

5. "That governments derive their just powers from the consent of the governed; that all power is inherent in the people, and all governments are founded on their authority, and instituted for their safety, peace and happiness; and that for the advancement of these ends, they have at all times an unalienable and indefeasible right to alter, reform or abolish their government in such manner as they may think proper," and that these fundamental principles, proclaimed in the Declaration of Independence, and reiterated in the Bills of Rights of twenty States, are now everywhere acknowledged as the decided and irreversible law of the land.

6. That, as has been decided by the Supreme Court of the United States, the people of Dakota are not a colony or province, subject to be governed permanently, or at the pleasure of Congress, as a Territory, but that having over 250,000 people and a Territory of

about 80,000 square miles, they have under the Constitution, and by virtue of the Compact contained in the Treaty of 1803, with France, and also by virtue of the Compact in the Ordinance of 1787, which by successive Acts of Congress was extended over Dakota, an "unalienable indefeasible," inherent and absolute, right to self-government.

7. That they have the same "inherent power and unalienable and indefeasible rights" which are solemnly and formally asserted for the people of the United States, in the Declaration of Independence, and reserved to them by the Constitution, and by the Bills of Rights of the several States, "to alter, reform or abolish their government in such manner as they may think proper."

8. That the Territory of Dakota lying south of the 46th parallel of latitude, has a present population of more than 250,000 people, and will, at its present rate of increase, in another twelve months, have over 300,000 people, which is more than double the population of any State heretofore admitted into the Union, out of the Territories, and more than that of seven of the original States at the time of their admission; and that it covers an area of about 80,000 square miles, which is larger than that contained in any State of the Union, except seven. That with these boundaries, the State of Dakota will be the eighth largest State in the Union, and will cover an area equal to that of the States of all New England and New Jersey and Delaware, with 8,320 square miles over. And that, therefore, the people of that part of Dakota, by virtue of their population, their territory, their constitutional rights, and the inviolable guarantees of treaties, and the will of the people, ARE A STATE, and ought without further delay, to form a State Constitution, and a State Government.

9. That it has been solemnly and authoritatively determined, by the precedents of thirteen States, by the sanction and affirmation of Congress, and by the approval of the Presidents from Washington down, that the people of a Territory when qualified for State Government, have the right in their primary and sovereign capacity, without previous authorization of Congress or of any other power than their own, to proceed to form their State Constitution, and State Government, and apply for admission into the Union.

10. That the experience of the past has demonstrated, that the most important need of the people of Dakota now is a RESPONSIBLE Government; a Government responsible to the people, elected by the people, and acting for the people. That unless such a Government is obtained speedily, we have good reason to apprehend lasting and remediless injury, to the institutions and the future welfare of the Commonwealth; and that this question should and will become the sole and vital issue, before all other issues, with the people of Dakota, until it is determined.

11. That the last Legislature of this Territory acted wisely and patriotically, in acceding to, and putting in the form of law, the general and earnest wish of the people, when they passed the bill convening a Constitutional Convention, at the Capital of the Territory, in October next, for the purpose of framing a Constitution and State Government, for that part of Dakota south of the 46th parallel, and of performing all other things, essential to the admission of such part of Dakota into the Union of the States. And that the will of the people, thus solemnly and authoritatively declared, was defeated by the Governor, when he refused to sign said bill; and that this act, was contrary to the universal wish, and the best interests, of all the people of Dakota.

12. That the people having been, by this action of the Governor, deprived of the ordinary means of declaring and executing their lawfully ascertained and expressed will, have full and unquestioned right, and authority, to fall back upon and exercise, the reserved rights and extraordinary powers, vested in them by the Constitution, and have, therefore for that purpose, full power to call and create a Constitutional Convention, a Constitution and a State Government, by their own spontaneous action, and by such methods and instrumentalities, as they may, in their primary and sovereign capacity, establish and ordain to that end.

ENDORSEMENTS FROM MEMBERS OF THE LEGISLATURE.

Yankton, Dakota, April 3, 1883.

Hon.....

Dear Sir: The undersigned members of the Yankton County Executive Committee, acting for the citizens of that County, who favor the movement proposed for the Huron Convention, called for June 19th, respectfully ask you, if you favor that movement, to sign and return to the President or Secretary, the endorsement of the call, printed on the adjoining page.

E. MINER, Sec'y. GEO. H. HAND, Pres.

Peter Neff,	J. L. Pennington,
S. W. Swift,	J. R. Gamble,
Dr. J. McGregor,	Bartlett Tripp,
Maris Taylor,	W. S. Bowen,
A. M. English,	J. M. Fogerty,
C. W. Wright,	G. R. Scougal,
R. H. Dolliver,	B. S. Williams,
J. R. Sanborn,	A. J. Pincheon,
C. J. B. Harris,	G. W. Roberts,
Wm. P. Dewey,	E. P. Wilcox,
J. W. C. Morrison,	D. F. Etter,
G. W. Kingsbury,	J. R. Hanson,
Hugh J. Campbell,	W. H. H. Beadle,
Newton Edmunds,	A. W. Barber,
J. C. McVay.	

The following responses have been received from Members of the Legislature:

The undersigned, Members of the Legislature of Dakota, heartily endorse the Call for the Convention at Huron, on June 19th, and recommend to the people of Dakota, in their several counties, to elect full delegations to that Convention:

J. R. Jackson,
Member of Council 3d district.
Frank J. Washabaugh
Member of Council 10th district.
E. H. McIntosh,
Member of Council 8th district.
W. H. Donaldson,
Member of the Council 7th district.
John W. Nickeus,
Member of Council 14th district.
James B. Wynn,
Member of House, 4th district.
N. Y. Hauser,
Member of House, 7th district.
W. B. Robinson,
Member of House, 8th district.
E. M. Bowman,
Member of House, 10th district.
A. A. Choteau,
Members of House, 10th district.

I am in favor of division on the 46th parallel, and also in favor of the Huron Convention, and all proper steps towards the forming of a State Constitution, and the admission of Dakota as a State.

Geo. W. Sterling,
Member of House, 8th district.

THE DATES OF ADMISSION AND POPULATION OF THE VARIOUS STATES WHEN ADMITTED INTO THE UNION.

The following are the dates of admission, and population when admitted, of all the States. The population of the original thirteen, which head the list, is given as taken in 1790:

	Date of Admission.	Population when admitted.
Delaware	Dec. 6, 1787	59,094
Pennsylvania	Dec. 12, 1787	434,375
New Jersey	Dec. 18, 1787	184,639
Georgia	Jan. 2, 1788	82,548
Connecticut	Jan. 9, 1788	237,946
Massachusetts	Feb. 6, 1788	378,787
Maryland	April 26, 1788	319,728
New Hampshire	June 21, 1788	141,885
Virginia	June 25, 1788	747,610
New York	July 26, 1788	340,120
South Carolina	May 23, 1789	240,073
North Carolina	Nov. 21, 1789	393,751
Rhode Island	May 29, 1790	68,825
Kentucky	Feb. 4, 1791	73,677
Vermont	Feb. 8, 1791	85,425
Tennessee	May 6, 1796	77,261
Ohio	Nov. 29, 1802	45,365
Louisiana	April 8, 1812	76,566
Indiana	Dec. 11, 1816	40,000
Mississippi	Dec. 10, 1817	65,000
Illinois	Dec. 3, 1818	45,000
Alabama	Dec. 14, 1819	127,901
Maine	March 15, 1820	298,269
Missouri	March 2, 1821	66,557
Arkansas	June 15, 1836	50,000
Michigan	Jan. 26, 1837	87,273
Florida	March 3, 1845	65,000
Texas	Dec. 29, 1845	170,000
Iowa	Dec. 28, 1846	145,000
Wisconsin	March 3, 1847	135,000
California	Sept. 9, 1850	92,597
Minnesota	May 11, 1858	172,023
Oregon	Feb. 14, 1859	52,465
Kansas	Jan. 29, 1861	107,206
*West Virginia	Dec. 31, 1862	442,014
*Nevada	Oct. 31, 1864	42,491
*Nebraska	Feb. 9, 1867	122,993
Colorado	Aug. 1, 1876	65,000

*By census of 1870.